

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

June 17, 2008

REG-2008-00022

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner (Commissioner) will hold a public hearing to discuss the proposed addition of section 2359.8 to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations. The proposed regulations will implement, interpret and make specific certain provisions of Division 2, Part 6, Chapter 1 of the California Insurance Code, entitled "Title Insurance."

The purpose of the regulations, specifically, is to set forth the remedies available to the Commissioner to ensure compliance with certain data collection and reporting activities as they relate to title and escrow rates and rating systems.

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt the proposed regulations under the authority of Insurance Code sections 924, 12401.1, 12401.5, 12401.7, 12401.9, 12414.14, 12414.15, 12414.16, 12414.17, 12414.18, 12414.20, 12414.21, 12414.22 and 12414.23. These sections generally require regulated entities to collect, maintain and produce data relating to title insurance rates and rating systems and authorize the Commissioner to impose penalties in the event a regulated entity fails to collect, maintain or produce such data. The Commissioner also proposes to adopt the proposed regulations under the authority of *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, which recognizes an implied delegation of rulemaking authority for those statutes that give an agency the authority to adopt those rules that are necessary for the due and efficient exercise of a power expressly granted by statute. The proposed regulations will implement, interpret, and make specific Insurance Code sections 924, 12401, 12401.1, 12401.2, 12401.3, 12401.7, 12401.5, 12401.8, 12401.9, 12414.14, 12414.15, 12414.16, 12414.17, 12414.18, 12414.20, 12414.21, 12414.22 and 12414.23.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: August 15, 2008 - 10:00 a.m.

Location: Department of Insurance Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Bryant Henley, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
henleyb@insurance.ca.gov
Telephone: (415) 538-4111
Facsimile: (415) 904-5490

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Alec Stone, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
stonea@insurance.ca.gov
Telephone: (415) 538-4113
Facsimile: (415) 904-5490

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on August 15, 2008**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: henleyb@insurance.ca.gov or stonea@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile. All comments sent by facsimile must be directed to the attention of Bryant Henley using the following fax number: (415) 904-5490. Comments sent to e-mail addresses or facsimile numbers, other than those provided herein will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above. Written comments shall be submitted by one method only.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed above) for this hearing in order to make special arrangements, if necessary.

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

Existing law requires entities that conduct the business of title insurance to collect, maintain and report detailed information concerning title and escrow transactions. This detailed information includes information concerning the premium, expenses, claims, amounts paid to or received from other entities and related information concerning the transaction of title and escrow business.

Generally, existing law authorizes the Commissioner to assess companies for failure to submit information in a timely fashion, to examine regulated entities' rates and rating systems, and to suspend or revoke the authority of an entity to engage in the business of title insurance. The proposed regulations will implement, interpret, and make specific those laws which generally authorize the Commissioner to require the collection and timely reporting of information. The proposed regulations will serve to implement and make specific the application of these laws to the collection, reporting and review of title and escrow ratemaking data, specifically.

The proposed regulations instruct all entities conducting the business of title insurance to collect and report to the Commissioner any information required by applicable title and escrow laws. The regulations establish a list of remedies that the Commissioner may pursue in order to ensure compliance with the collection and reporting requirements relating to title and escrow ratemaking information. The Commissioner's remedies, as set forth in the proposed regulations, include but are not limited to the assessment of a late filing fee, an examination of records at the offending entity's expense, and the suspension or revocation of any license or certificate of authority issued to the offending entity.

Comparable Federal Law

The Real Estate Settlement Procedures Act (RESPA) is a federal statute that sets forth disclosure

requirements for residential real estate transactions. (Title 12, U.S. Code, sections 2601-2617.) The RESPA requires, among other things, that borrowers must be informed of all closing costs, lender servicing and escrow account practices, including business relationships between closing service providers and other parties to the real estate transaction. The RESPA also outlines the settlement/closing process for the real estate loan transaction and prohibits illegal activity such as kickbacks and referral fees among settlement service providers.

By contrast, the proposed regulations set forth the Commissioner's available remedies to ensure prompt and complete retention and reporting of information relating to title and escrow rates and rating systems. The Commissioner's purpose in reviewing and receiving such information is to ensure that title and escrow rates are not excessive, inadequate or unfairly discriminatory.

The proposed regulations do not create any duties to disclose information to borrowers. To the extent that illegal activity such as kickbacks and referral fees are regulated by the Commissioner, those standards are not set forth in these regulations. While the RESPA contains particular prohibitions and disclosure requirements for the real estate transaction, the required disclosures do not conflict with, or duplicate, the requirements set forth in these proposed regulations.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES

The Commissioner has made an initial determination that the adoption of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.

- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses affected by the proposed regulations are insurers, underwritten title companies and controlled escrow companies that are engaged in the business of title insurance within the meaning of California Insurance Code section 12340.3. The proposed regulations may affect those businesses that fail to maintain or provide detailed records of their business activities.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTING REQUIREMENT

The Commissioner finds it is necessary for the health, safety, or welfare of the people of this State that these regulations which require a report apply to businesses.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state.

The proposed regulations could force a regulated entity to surrender its license or certificate of authority to operate in this state, in which case the salaries, wages, and benefits lost to its employees could become significant.

The insurance businesses of some entities could potentially be eliminated, should the proposed regulations become effective, resulting in elimination of jobs held by individuals employed by those entities. Accordingly, in the Commissioner's assessment, this regulatory action may result in the elimination of businesses and jobs in California. However, the extent to which jobs and businesses will be lost will depend entirely upon the regulated entities' willingness to collect and report relevant ratemaking information in accordance with applicable law. Because the Commissioner expects the affected entities to comply with existing law, the impact of the proposed regulations on jobs in California should be minimal.

The proposed regulations will not affect the expansion of other businesses doing business in California.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The purpose of the proposed regulations is to implement a statutory mandate. To date, no reasonable alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The Commissioner has not identified any alternatives that would lessen any adverse impact on small businesses. Nor have any such alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes. To the extent that the proposed regulations affect insurance companies and escrow-related services where the annual gross receipts for the business exceed two million dollars, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons for the proposed regulations. The initial statement of reasons will be subject to amendment, and at the conclusion of this rulemaking process a final statement of reasons will be prepared.

Upon **written or e-mail** request, the rulemaking file, including the final statement of reasons, all information upon which the regulations are based and the express terms of the proposed regulation will be made available for inspection and copying once it has been prepared. Written requests for the rulemaking file should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. On the right-hand column of the page, click the drop-down menu under the heading 'For Insurers.' In this section, scroll down until you see the subheading 'Regulations.' Below this subheading, click on the 'Proposed Regulations' link and then click on the 'Search for Proposed Regulations' link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2008-00022" (the Department's regulation file number for these regulations) in the 'Search for' field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "12401.5"), or search by keyword ("title insurance," for example). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Statistical Plan Enforcement Remedies' link, and click it. Links to the documents associated with these regulations will then be displayed.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text, such that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

Dated: June 17, 2008

STEVE POIZNER
Insurance Commissioner

By _____
Bryant W. Henley
Sr. Staff Counsel